City of Louisville
COLORADO • SINCE 1878

City Council

Study Session Agenda

August 22, 2017
Library Meeting Room
951 Spruce Street
7:00 PM

Note: The time frames assigned to agenda items are estimates for guidance only. Agenda items may be heard earlier or later than the listed time slot.

7:00 p.m.	**I.**	Call to Order
7:00 - 7:30 p.m.	**II.**	Discussion – Telecommunications Ordinance Update
7:30 – 8:30 p.m.	**III.**	Discussion/Training – Open Government Rules
8:30 – 9:00 p.m.	**IV.**	Advanced Agenda & Identification of Future Agenda Items
9:00 p.m.	**V.**	Adjourn

City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM II

SUBJECT: **DISCUSSION – TELECOMMUNICATIONS ORDINANCE UPDATE**

DATE: **AUGUST 22, 2017**

PRESENTED BY: **ROBERT ZUCCARO, PLANNING & BUILDING SAFETY DEPARTMENT**

SUMMARY:
Included in the 2017 Work Plan is an update of the City's Telecommunications regulations contained in Chapter 17.42 of the Municipal Code. The following is staff's current scope of work for the project:

- Update the regulations to comply with recent federal regulations that limit zoning review timeframes (shot clocks) and require administrative approvals for minor modifications to existing facilities and colocations.
  Summary:
  https://apps.fcc.gov/edocs_public/attachmatch/DA-12-2047A1.pdf
  FCC Report and Order (Minor Modifications, Colocations, Shot Clocks):
  http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1021/FCC-14-153A1.pdf
  FCC Declaratory Ruling (shot clocks):
  https://apps.fcc.gov/edocs_public/attachmatch/FCC-09-99A1.pdf
- Update the regulations to comply with recent state legislation that addresses small cell facilities and networks and access to rights of way.
  Summary:
  https://leg.colorado.gov/bills/hb17-1193
  Signed Act:
  https://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017a_1193_signed.pdf
- Ensure the regulations accommodate and address current and future technologies.
- Evaluate administrative and public hearing review procedures.
- Evaluate design guidelines and requirements.
- Ensure the updated regulations adequately accommodate public safety communications.

The City will be engaging the law firm Kissinger and Fellman, P.C. to assist with this project. Kissinger and Fellman has extensive experience working with the wireless industry and on drafting municipal codes that address current technologies and compliance with both federal and state regulations.

BACKGROUND:

Federal Regulations:

There are extensive federal regulations that affect local zoning authority on wireless facilities, with a stated intent of promoting and removing barriers to the deployment of wireless infrastructure. One set of regulations require that local jurisdictions process zoning applications within a "reasonable period of time," which the FCC defines as 90 days for colocations and minor modifications and 150 days for new facilities. A local jurisdiction may determine an application is incomplete and toll (stop) the 90 or 150-day "shot clock," but the jurisdiction must make this determination within 30 days of receiving an application. Following an applicant's supplemental submittal to address any noted deficiencies in the application, the jurisdiction must reply within 10 days if the submission did not adequately provide the missing information. This mandated review timeframe does not match the City's current process for development review. In addition to updating our administrative procedures, the revised ordinance can address some of these requirements.

Another set of federal regulations requires that local jurisdictions provide administrative approvals for "minor modifications" and colocations. The FCC specifically defines what type of modification or colocation meets this threshold, which includes an increase in tower heights by up to 10% or 20 feet, whichever is greater, and extension from the edges of towers up to 20 feet. For existing support structures other than towers (which may include buildings with wireless facilities), the FCC requires that local jurisdictions allow an increase in support structure heights by up to 10% or 10 feet, whichever is greater, and extension from the edges of structures up to 6 feet. The regulations also require local jurisdictions to allow expansions of ground equipment up to 10%. The expansions and colocations must continue to comply with any zoning design requirements approved with the original zoning approval. For example, if a condition of approval was screening or painting the antennas to match the building, the expanded or collocated antennas must meet the same design requirement. In addition to updating the City's regulations to accommodate these federal mandates, the City should also consider when approving new facilities, how future applicants could expand the facilities under the "minor modification" provisions.

State Regulations:

Recent state legislation addresses requirements for small cell facilities and micro cell facilities in public rights of way. Small and micro cell networks and facilities differ from "macro" cell facilities in that they are conducive to being located on existing right of way infrastructure, such as utility, traffic signal and light poles. Small and micro cell facilities have a smaller reach than "macro" sites and need to be configured in a network to provide continuous coverage. Small cell facilities are limited to three cubic feet in size with associated equipment no larger than 17 cubic feet. Micro cell facilities are limited to 24 inches in length, 15 inches in width, and 12 inches in height, and include a limit of 11 inches for any exterior antenna. The state regulations require processing applications for small cell facilities within 90 days. This is a stricter standard than the

federal regulations, which allow up to 150 days for new installations of small cell facilities. The regulations also require that local jurisdictions treat installation of multiple facilities within a local jurisdiction as a consolidated application and with a single permit. Further, the regulations require that local jurisdictions allow small cell facilities in all zoning districts but applicants must obtain consent to locate in the right of way without discrimination among providers.

Example of Small Cell Antenna on Utility Pole

Current City Code:

The City adopted its current telecommunications code in 1997. The code provides administrative review and public review options through the Special Review Use processes for building or roof mounted facilities and "alternative" tower facilities. An "alternative" facility is one that camouflages or conceals the presence of antennae with structures such as clock towers, light poles, silos and artificial trees. In general, the code allows administrative review of "alternative" and building or roof mounted facilities that meet all design requirements. The code does not allow freestanding facilities and towers in any zone district if not "alternative." The regulations provide specific design requirements for different types of installations and requires compliance with Planned Unite Development (PUD) criteria for some applications or if an applicant requests a variance on facility height. Design requirements include the following:

- Design requirement for screening and matching architecture, colors and texture of buildings and matching or mimicking of building materials;
- Landscape screening requirements;
- Maximum heights;
- Minimum setbacks; and
- Maximum projections from sides of structures and buildings.

The current code does not provide regulations or specific criteria for facilities located in pubic rights of way, where many small cell facilities would locate. The current code also does not provide any allowances for public safety communication facilities, which are subject to the same codes and requirements as private facilities.

DISCUSSION:
Staff is currently developing a scope of work with Kissinger and Fellman to draft updated regulations for consideration. The scope includes an outreach meeting with industry representatives to better understand barriers to investment in wireless infrastructure that the City may be able address with the ordinance update. The Planning Commission and City Council would review the ordinance draft through the typical public hearing process for zoning ordinance amendments. The intent of the revisions are to provide reasonable regulations within federal and state law that both promote investment in wireless infrastructure in the City and provide design and siting regulations to protect the health, safety and welfare of the City's residents.

Some specific questions for discussion during this study session:

- Are there any specific considerations on approval process and procedures that the City Council would like staff to consider in drafting the ordinance? For example, are the current thresholds for public and administrative review appropriate or would Council prefer to have public hearings for more types of new facilities?
- Are there any specific consideration on design guidelines, screening and siting requirements that the City Council would like staff to consider in drafting the ordinance?
- Does the City Council want to continue to prohibit freestanding towers and structures in all cases?
- Should the City exempt public safety communications from zoning permitting requirements?
- Should the process include a public input meeting as part of the ordinance development and review process other than the Planning Commission and City Council public hearings and meetings?
- Is there additional information the Council would like to review as part of this process?

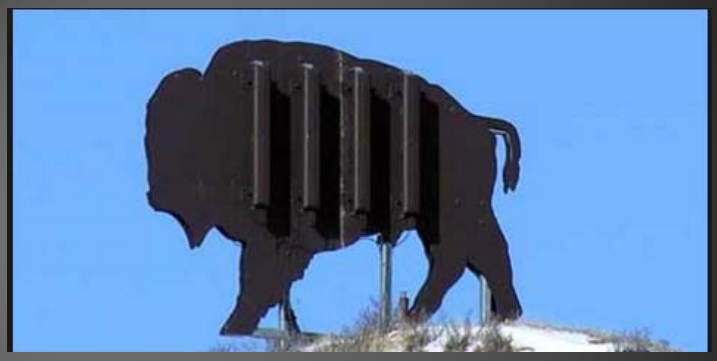
RECOMMENDATION:
Staff seeks City Council feedback on the process and any issues they would like considered in the redrafting of the City's telecommunications ordinance.

ATTACHMENT:

1. Presentation

City Council – Study Session
August 22, 2017

Wireless Code Update



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City Council – Study Session
August 22, 2017

Wireless Code Update

Proposed Scope of Work

- **Update code to comply with federal and state regulations**
- **Ensure regulations accommodate current and future technologies**
- **Evaluate review processes and procedures**
- **Evaluate design guidelines and siting requirements**
- **Evaluate regulations for public safety communications**

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City Council – Study Session **Wireless Code Update**
August 22, 2017

Federal Regulations

FCC 2009 Declaratory Ruling/FCC 2014 Report and Order

- **Sets "Shot Clock" to review applications**
  - **90 days for minor modifications/colocations or 150 days for new facilities and major modifications**
- **Requires approval of and defines "minor modifications" of existing facilities**
  - **Tower facilities can extend up 10% or 20' and out 20'**
  - **Other support structures can extend up 10% or 10' and out 6'**
  - **Ground equipment can expand by 10%**

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City Council – Study Session **Wireless Code Update**
August 22, 2017

State Legislation

House Bill 17-1193

- **Small cell facilities a use by right in all zone districts**
- **Small cell facility applications processed within 90 days**
- **Small cell networks processed as single application**
- **Allows small cell facilities within right of way on utility, traffic and light poles and allows lines between poles for micro facilities**

Example of Small Cell Antenna on Utility Pole

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City Council – Study Session
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Wireless Code Update

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Wireless Code Update

City's Current Code

- **Adopted in 1997**
- **Special Review Use for New Facilities**
- **Design Requirements for Screening, Materials and Colors and Texture**
- **Landscape Screening for Ground Equipment**
- **Maximum Heights and Minimum Setbacks**
- **No Right of Way Provisions**
- **No Provisions for Public Safety Communications**

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City Council – Study Session
August 22, 2017

Wireless Code Update

Discussion Questions

- **Is current approval process for new facilities still generally acceptable to Council? E.g. administrative vs. public hearing processes**
- **Are there any specific design or siting requirements Council would like staff to consider in drafting the ordinance?**
- **Should freestanding towers continue to be prohibited in all cases?**
- **Should there be any special considerations or waivers for public safety communications?**
- **Is there any additional information desired to help with the review of the ordinance?**
- **What public outreach and public meetings need to take place other than the required public hearings?**

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SUBJECT: **DISCUSSION – OPEN GOVERNMENT AND ETHICS**

DATE: **AUGUST 22, 2017**

PRESENTED BY: **SAM LIGHT, CITY ATTORNEY**
MEREDYTH MUTH, CITY CLERK

SUMMARY:
City Attorney Sam Light will discuss open government rules related to the City Charter, Ethics Code, and State Statute. The City Council will be able to ask questions and discuss issues of interest.

ATTACHMENT(S):
None.

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Addendum #1
Items presented at the meeting.

City of Louisville
Elected Officials Training

Presented by Sam Light
Light | Kelly, P.C.
August 22, 2017

Introduction

- In this presentation, we'll examine:
  - Transparency issues:
    - Open meetings & records issues
    - Non-meeting communications
    - Public participation
  - Personal conduct issues:
    - Basic conflict of interest rule
    - Role discipline in quasi-judicial matters
  - Land use responsibilities

Transparency & Public Participation – Meeting and Hearing Practices

Transparency is a basic expectation of the citizens for meetings of its local elected and appointed bodies

A lack of transparency or a perception of inadequate or ineffective opportunities for public participation can cause massive trust and credibility issues

Honoring Transparency

- Open Meetings Law (OML) applies to all meetings of the governing body, boards, commissions, committees, etc.
- Applies to 3 or more or a quorum, whichever is less.
- Requires discussion/action on all public business to take place only at a meeting open to the public and of which timely notice has been given.
- The OML and City Charter permit executive sessions only for limited and specified purposes and following specified procedures.
- It's critical to conform to the letter and the spirit of the OML in conducting meetings.

Non-meeting Communications

- Electronic communications may be covered by the OML.
- E-mails may be covered by Open Records Act (ORA).
- Non-meeting communications of all kinds may be subject to the civil discovery process.
- This means public officials should be circumspect in all forms of communications as public officials.
- The Open Meetings Law says the formation of public policy is public business – don't conduct your business so as to leave a sense that, in your meetings, people are walking into the middle of a conversation.

Non-meeting Communications

- Are e-mails sent to you as a public official at your home computer considered City records? Generally, yes
- ORA: "Public records includes the correspondence of elected official" except to the extent it is:
  - Work Product
  - Not related to exercise of official functions and not involving the receipt or expenditure of public funds
  - A confidential communication from constituent, that clearly implies by nature or content that constituent believes the correspondence is confidential for the purpose of requesting assistance or information related to a personal or private matter not publicly known to be affecting the constituent; or response from elected official regarding such a communication.
  - Otherwise subject to nondisclosure per the ORA

Non-meeting Communications

- OML: Also states that if elected officials use e-mail to discuss pending legislation or other public business among themselves, then the e-mail shall be subject to the requirements of the open meetings law
- Per Colorado Supreme Court, ownership of the media is not dispositive (*Denver Pub. Co. v. Arapahoe County*, Colo. 2005); rather the outcome is content-driven
- Takeaways:
  - E-mail discussion can be subject to OML
  - Whether an e-mail is a public record doesn't turn on whether it was created on a publicly or privately owned machine
  - E-mails are subject CORA independent of whether there is a meeting issue
  - Examples (handout)

Non-meeting Communications

- Are my "personal notes" actually public records?
- Probably not, for ORA purposes
  - *Wick v. Montrose County Board of County Com'rs*, (Colo. Supreme Ct. 2003)(case involving County Manager's diary, holding ORA "was not intended to cover information held by government official in his private capacity")
  - However, in litigation context they may be discoverable
  - This is because discovery rules are broader and, except for privileged information, discovery can be had of any information relevant to claims or defenses in litigation, even if not admissible
- In either case, certain privileges may (or may not) apply, but their application is very fact-specific. These may include:
  - Work Product Exception to ORA
  - Deliberative Process Privilege

One-on-One Discussions

- Are one-on-one discussions outside of a meeting prohibited?
  - No
  - But, for Council Committees, they are because the OML rules applies to three or a quorum, whichever is less
- What is a serial meeting?
  - This oft-used term is not directly discussed in the case law, but the OML compliance concern is evident in the term itself: If we are meeting one-on-one, in a series, to discuss (or decide) a matter of public business, then:
    - The purpose of the OML is thwarted, and
    - Isn't a meeting being replaced with a non-meeting
- The few Colorado cases that touch on these issues focus on the public action as being mere rubber-stamping

Sundry Thoughts On Communication

- For confidential communications:
  - Identify and honor the need confidentiality, whether for executive sessions or confidential documents
- For non-meeting discussions:
  - Identify and honor the Council's "need to know" as a Council
- For determining and giving direction:
  - Deliberate with many voices, but also identify and honor the need to "speak with one voice"

Meetings, Hearings & Public Participation

- Lay the groundwork for orderly public participation; develop a culture of civility that flows from the top down
- Maintain a degree of predictability and formality – use titles, insist speakers be recognized, use podium, etc.
- Have a consistent hearing process:
  - Sequence and time limits for speakers
- Have a plan for handling the unexpected, but…

Meetings & participation, cont'd

- Don't try to suppress the content of citizen speech! It's not just unlawful, it can be futile!
- But if someone is being disruptive, engaging in personal attacks, etc., then a response may be appropriate.
  - "Disarm" a tense situation. **Don't** match tone for tone, and "out-shouting" doesn't work.
- Establish and communicate shared norms for meetings, e.g., "We appreciate everyone's viewpoints, but not personal attacks. Personal attacks are unproductive and unhelpful. Please redirect your comments towards the issues, and away from personalities."
- What is the scope of your Public Comment period? (Hint – it is time, not topic).

Meetings & participation, cont'd.

Most Important Goal: For public participation, it's that attendees leave feeling the proceeding was fair and their views were heard and appreciated.

- Explain scope at the outset.
- Deal with any conflict of interest issues up-front. If there is a conflict, disclose, recuse & exit.
- Suggest up front that speakers don't repeat prior comments; it's okay to agree with an earlier speaker.
- Make sure all attendees know they have the right to speak.

Personal Conduct

- The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as a governing body member.
- The incivility and divisiveness that characterize partisan politics need not be imported into nonpartisan local government!
- Be attentive, proactive and cautious in ethics matters.

Personal Conduct

- With respect to one another and the way you govern:
  - Is someone maintaining the "outsider" perspective ?
  - Is someone acting as "I' rather than "we"?
  - Is there an "imbalance of information" on the body?
  - Is there a sense of distrust among one another?
  - Is there constantly the same split vote on every issue with the same people lining up on the same side every time?
- If so, why?
- Recognize that these are issues of governance, which are in your "wheelhouse" to address and resolve.

Be attentive to ethics

- In Colorado, ethics scandals are rare – but happen from time to time.
- Ethical misjudgments greatly undermine public confidence in government.
- Can result in criminal and civil liability.
- There is often a "personal benefit" exclusion from public officials liability coverage.
- Gaining a personal benefit is NOT in one's scope of employment or job description as a municipal official.

Ethics

- CONFLICTS OF INTEREST: General Rule: If you have a conflict of interest; that is, a situation where your official action as a Councilmember will affect your own financial interest, you must:
  - Disclose and describe the conflict at the meeting at the outset of matter
  - Not participate in the discussion
  - Leave the room
  - Not attempt to influence others

Ethics

- What about a "personal or private interest" (term used in state law), where there is not a financial interest:
  - Under the Louisville Code of Ethics, interest is financial interest
  - Under State Law as well, the phrase "personal or private interest" is focused on financial interest
  - But, even if there is no "financial interest," recusal would be appropriate in cases of, for example, close friendship, close proximity or personal bias (particularly in quasi judicial matters)

Ethics Scenario

Joe is a citizen and traffic engineer in the City. He is well respected and represents landowners with applications in front of the Council and Planning Commission. In fact, he has a few applications pending. The City Manager, at Council's direction is contracting for a traffic study of traffic flow on weekend evenings for downtown, within her purchasing authority, and has three bids. Joe's is the lowest by a wide margin, and people know that.

Is this an ethics problem? For who? What should the City Manager do?

Ethics Scenario

The City Council is considering a subdivision plat to split one lot into two, to allow one additional house. Does Councilmember Joe have an ethics issue if:

- He works for the bank that has the construction loan for the new house?
  - Does it depend on what work he does?
- He is the adjacent neighbor?
- He received approval for a similar lot split last year, before he joined the Council.
- He was quoted in the paper saying "I'm opposed to any more lot splits. They are ruining the character of our neighborhoods."

Land Use Responsibilities

- General Framework: Most all land use decisions are quasi-judicial, and both City Council and Planning Commissioners are "Quasi-Judges"
- The Quasi-Judges responsibilities:
  - Maintain Impartiality; avoid bias and pre-judgment
  - Render a Decision on the Application
  - Render a Decision Based on the Facts Presented at the Hearing
  - "Judge," the application rather than "Advocate" for it (i.e., I like it) or "Testify" about it

Land Use Responsibilities

- As the 'Quasi-Judge," the Council has final decision-making power to:
  - Decide whether the application satisfies the criteria
  - Decide to adopt, not adopt or modify a recommendation of the staff or planning commission
  - Where applicable, decide whether a specific criteria applies in a specific case
  - Interpret applicable criteria, consistent with law
- However, in all decisions, it's important the record include evidence supporting the decision made (whether it's written findings, staff report, PC minutes or recommendation, Council comments or some combination)

Land Use Responsibilities

- Role discipline in quasi-judicial decision-making:
  - Avoid ex-parte communications
  - Avoid doing your own fact finding
  - Wait until the matter is ripe for your involvement
    - As the final decision-maker, you have the most powerful role in the *process* but the process must run its course
    - Therefore, do not "reach down" into the Planning Commission proceedings, or "reach out" to address pre-hearing "buzz"
    - But, when the matter is ripe for your consideration, deliberate, test the evidence, and decide

Thank you

QUESTIONS?

OPEN MEETINGS & E-MAIL
Louisville Legal Review Committee
January 15, 2015
Prepared by LIGHT | KELLY, P.C.

I. INTRODUCTION

The following provides a brief overview of provisions of the Colorado Open Meetings Law, C.R.S. §24-6-401 et seq. (which is a portion of the Colorado Sunshine Act) of specific interest to City Councilmembers. Particular emphasis is placed on the meeting notice requirements and the use and handling of e-mail.

II. OVERVIEW OF THE OPEN MEETINGS LAW

1. Applicability. The Open Meetings Law ("OML") applies to any "local public body," which includes the City Council, City boards, committees and commissions, and other formal bodies that perform an advisory, policy-making or rule-making role. It does not apply to the administrative staff.

2. Basic Open Meeting Rules. There are two critical rules regarding open meetings:

   - All meetings of a quorum or three or more members of a local public body (whichever is fewer) at which any public business is discussed or at which any formal action may be taken are public meetings open to public.

   - Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at which a majority or quorum of the body is in attendance, or is expended to be in attendance, shall be held only after full and timely notice to the public.

   A "meeting" is defined by the OML as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication." In construing these provisions, the Colorado Supreme Court has held that if the meeting is rationally connected to the policy-making responsibilities of the public body holding or attending the meeting, then the meeting is subject to the OML. Bd. of Cnty. Comm'rs, Costilla Cnty. v. Costilla Cnty. Conservancy Dist., 88 P.3d 1188 (Colo. 2004).

3. Specific Louisville Rules. The Louisville Municipal Code is more comprehensive than the OML. City Code section 2.90.030 states: All meetings of three or more members of the City Council, or of three or more members of the same board or commission, at which any public business is discussed, at which any presentation pertaining to public business is made, or at which any official action may be taken, shall be public meetings open to the public at all times. Further, while the OML has a 24-hour notice posting requirement, the City Charter provides for posting of meeting agendas and agenda-related materials 72 hours in advance of the meeting.

EXAMPLES:

- A discussion among three Councilmembers about public business is an open meeting. Thus, a citizen may listen in on even an impromptu discussion of public business by three Councilmembers.

- If three Councilmembers show up at the coffee shop purely by chance, this is not an open meeting. More particularly, the OML does not apply to "any chance meeting or social gathering at which discussion of public business is not the central purpose."

- A meeting of two Councilmembers is not subject to the OML and therefore need not be open and requires no notice. The threshold number for the City Council is three members. However, the threshold number for a smaller committee, such as the three-member finance committee, is two members.

III. E-MAIL

1. E-Mail Meetings. A meeting subject to the OML can be convened by e-mail or telephone. The OML states that if elected officials use e-mail to discuss pending legislation or other public business among themselves, the e-mail shall be subject to the requirements of the OML.

   In a 2012 case, the Colorado Court of Appeals ruled that the PUC did not violate the OML during an e-mail exchange in which Commissioners suggested edits to language proposed for inclusion in a legislative bill. The court determined the e-mail exchanges were not part of the PUC's policy-making function, as the PUC does not create law, and therefore commenting on and editing the bill was not a formal action. Intermountain Rural Elec. Ass'n v. Colorado Pub. Utilities Comm'n, 298 P.3d 1027, 1031 (Colo. App. 2012).

   Even though Councilmember e-mail exchanges may not be contemplating policy-making action, they may still violate the City Code, which states that any "discussion" or "presentation" of public business must be in a meeting open to public.

2. E-Mail Suggestions. While e-mail is convenient, it can become a significant source of OML issues. A few suggestions to head off problems:

   - Conduct and discuss public business at duly-called and noticed regular and special meetings.

   - Do not use e-mail policy for discussions and limit its use to non-policy discussions, or otherwise establish an open e-mail system which is readily accessible.

   - Further, do not use one-on-one e-mails (or meetings) to determine policy. As noted in the policy statement of the OML, its purpose is that the formation of public policy

is public business.[1]

3. E-mail Risks. E-mail carries with it the risk of inadvertent or unintended "discussion" of public business. Though an e-mail may be sent from only one Councilmember to another, the sender cannot be certain that it will not be forwarded.

4. E-Mail Correspondence. E-mail to or from a constituent does not trigger the OML, but is subject to certain provisions of the Open Records Law. However, e-mail on quasi-judicial matters does implicate due process rights and therefore requires special attention.

EXAMPLES:

- An e-mail is sent to a Councilmember about a decision on a special use permit request. That e-mail should be made a part of the record and available for review, so that interested parties can review it as decisions on special use permits must be made based on the evidence presented at a hearing.

- A constituent e-mails a Councilmember, who replies, copying the other Ward Councilmember and the City Manager. This correspondence complies with OML, as the City Manager is not an elected official, but part of the administrative staff.

- A Councilmember replies to a constituent's question, and copies all of the other Councilmembers, all of whom respond to Councilmembers with their own comments about what the City's policy should be on the matter raised by the citizen. This type of exchange would violate OML to the extent three or more members are discussing/debating public policy outside of a duly-noticed public meeting.

- A Councilmember sends an e-mail to the other Councilmembers with a copy of an article from the CML magazine on a topic of current interest. That distribution itself done not implicate the OML. However, if there then ensues an e-mail discussion of what the City's policy should be, the same issue as the above example arises.

[1] While "serial meetings" have not been directly addressed by the Colorado appellate courts, one recent case demonstrates the legal ramifications of public body members using e-mail and telephone to discuss policy changes. In Colorado Off-Highway Vehicle Coal. v. Colorado Bd. of Parks & Outdoor Recreation, 292 P.3d 1132, 1137-38 (Colo. App. 2012), the Board admitted that it violated the OML when Board members (i) discussed program changes via e-mail; (ii) held a closed phone conference followed by e-mails; and (iii) held a noticed meeting that was open to some persons but not all citizens. While the Court held the Board was able to "cure" the violations by holding additional open meetings at which all parties could testify on the substantive policy change being made, the Court emphasized that the focus of the OML is openness in the decision-making process.

CORA Definition of "Work Product"
Prepared by Light | Kelly, P.C.

CORA's definition of "Work Product" is complex. C.R.S. § 24-72-202(6.5).

"**Work product**" means and includes:

- all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:
    - Notes and memoranda that relate to or serve as background information for such decisions;
    - Preliminary drafts and discussion copies of documents that express a decision by an elected official.
- Four categories of documents relating to activities of the state general assembly, such as documents relating to the drafting of bills and amendments and legislative research, which are not addressed here as they do not apply to local governments

"**Work product**" does not include:

- Any final version of a document that expresses a final decision by an elected official;
- Any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;
- Any final accounting or final financial record or report;
- Any materials that would otherwise constitute work product if such materials are produced and distributed to the members of a public body for their use or consideration in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.
- Any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents—which are public records—include, but are not limited to:
    - Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation;
    - Compilations of existing public information, statistics, or data;
    - Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.